

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VERONICA BROWN,

X

14-CV-5960 (SLT)(MDG)

Plaintiff,

**NOTICE OF
MOTION**

-against-

MARRIOTT INTERNATIONAL, INC.,

Defendant.

X

PLEASE TAKE NOTICE that, upon the accompanying Memorandum, and the exhibits annexed thereto, and the pleadings and papers on file herein, Defendant Marriott International, Inc. ("Marriott"), by and through its counsel of record, will and hereby does move the above-captioned Court, before the Honorable Marilyn D. Go, United States Magistrate Judge of the United States District Court for the Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, New York 11201, on a date and time to be set by the Court if oral argument is permitted, for an order, staying discovery in the above-captioned matter.

As grounds for their motion, defendant states as follows:

1. Plaintiff Veronica Brown seeks to recover for injuries she claims to have sustained while staying at the St. Kitts Marriott Resort & The Royal Beach Casino, a hotel in the sovereign nation of Saint Kitts that is wholly owned and operated by entities incorporated in Saint Kitts. Defendant Marriott International merely licensed the use of the "Marriott" name to the hotel.

2. The Court (Townes, U.S.D.J.) recently granted leave to Marriott file a pre-answer motion to dismiss this action on several grounds. First, four of the five causes of

action in the complaint fail to state claims. The agency cause of action does not plead the elements of agency, and even if it did, plaintiff's assertion that there was an agency relationship between Marriott and the owner and operator of the hotel is purely speculative. The equitable estoppel, fraud, and punitive damages causes of action fail to state causes of action because they do not allege that plaintiff suffered any legally recognized harm, due to her potential inability to sue Marriott in a United States court.

3. Second, the complaint fails to join necessary parties, specifically the Saint Kitts entities that own and operate the hotel where plaintiff alleges that she was injured. The action cannot proceed without these parties because they were solely responsible for the operation and maintenance of the hotel.

4. Third, pursuant to the doctrine of forum non conveniens, the courts of Saint Kitts are the appropriate forum for this action because that is where the alleged incident at the center of this personal injury action occurred. The Eastern District of New York has no relationship to the accident. Furthermore, witnesses who are critical to the trial of this matter are located in Saint Kitts, and the Court cannot compel their attendance at trial in New York.

5. Due to the impending motion to dismiss, Marriott is requesting that this Court stay any additional discovery in this action pending resolution of the motion to dismiss.

6. Courts have discretion to stay discovery "for good cause" pending the outcome of a motion to dismiss. See Fed. R. Civ. P. 26(c); Josie-Delerme v. Am. Gen. Fin. Corp., No. 08-CIV-3166, 2009 WL 497609, at *2 (E.D.N.Y. Feb. 26, 2009). "[G]ood cause may be shown where a party has filed (or sought leave to file) a dispositive motion." Anti-Monopoly, Inc. v. Hasbro, Inc., No. 94-CIV-2120, 1996 WL 101277, at *6 (S.D.N.Y. Mar. 7, 1996); see also Transunion Corp. v. PepsiCo, Inc., 811 F.2d 127, 130 (2d Cir. 1987).

7. Because Marriott's motion to dismiss is well founded, further discovery would be needlessly time consuming and expensive. Additionally, plaintiff would not suffer any prejudice due to a stay of discovery.

WHEREFORE, for all the foregoing reasons and those contained in the supporting Memorandum, this Court should stay discovery pending the resolution of Marriott's pre-answer motion to dismiss.

Dated: New York, New York
August 6, 2015



WHITE FLEISCHNER & FINO, LLP

By: _____

Daniel M. Stewart (7989)

Attorneys for Defendant

MARRIOTT INTERNATIONAL, INC.

61 Broadway - 18th Floor

New York, New York 10006

(212) 487-9700

Our File No.: 105-18017

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:


Wendy Jantz, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Staten Island, New York.

That on August 6, 2015, deponent served the within **NOTICE OF MOTION AND MEMORANDUM IN SUPPORT** upon the attorneys and parties listed below by **ECF and United States prepaid mail** by placing same in a mailbox in the State of New York:


TO:

Mitchell G. Shapiro
Salzman & Winer, LLP
Attorneys for Plaintiff
305 Broadway – Suite 1204
New York, New York 10007
212-233-6550



Wendy Jantz

Sworn to before me this
6th day of August, 2015



DANIEL M. STEWART
Notary Public, State of New York
No. 02ST6078049
Qualified in New York County
Commission Expires May 19, 2019

Index No. **14-CV-5960 (SLT)(MDG)**

Year

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NOTICE OF MOTION

WHITE FLEISCHNER & FINO, LLP

Attorneys for DEFENDANT

**61 BROADWAY
NEW YORK, N.Y. 10006
(212) 487-9700**

To:
Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

☐ *that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on*

**NOTICE OF
ENTRY**

☐ *that an Order of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court, at , on , at .*

**NOTICE OF
SETTLEMENT**
Dated:

**WHITE FLEISCHNER & FINO, LLP
61 BROADWAY
NEW YORK, N.Y. 10006**